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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,377	10/12/2001	Joseph M. Murray	KFI-100	9750
23290	7590	05/11/2004		
HOLLANDER LAW FIRM, P.L.C. SUITE 305 10300 EATON PLACE FAIRFAX, VA 22030				
			EXAMINER BECKER, DREW E	
			ART UNIT 1761	PAPER NUMBER

DATE MAILED: 05/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/976,377	Applicant(s) MURRAY ET AL.	
	Examiner Drew E Becker	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-40 and 59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-40 and 59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 21-31, 33-38, 40, and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmermann et al [Pat. No. 5,205,106] in view of McHale et al [Pat. No. 5,538,742].

Zimmermann et al teach a method of rolled foods by conveying multiple parallel strips of food on a support material (Figure 1, #14 & 16), the food being dehydrated fruit puree (column 2, line 50), segmenting the food strips by embossing figures or shapes into them (Figure 1, #108), cutting all the way through the strips and support material to form leading and trailing ends (Figure 1, #64), rolling the food (Figure 1, #74), embossing the same repetitive figure or a different figure (column 9, lines 9-28), the food being at a temperature of about 75 to about 90°F (column 4, line 54), and about 8 to 16 strips (Figure 1, #14). Zimmermann et al do not recite segmenting across the entire width of the food, a scoring roller with knives, and 15-50% nicked edge. McHale et al teach a method of making rolled foods by segmenting across the entire width of the food (Figures 1) with a scoring roller having knives (Figure 14, #123). It would have been obvious to one of ordinary skill in the art to incorporate the width-wise segmenting and scoring roller of McHale et al into the invention of Zimmermann et al since both are

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directed to making rolled foods, since Zimmermann et al already included segmenting and rollers (column 9, lines 9-28; Figure 1, #18 & 20), since rollers were a convenient means of providing continuous cutting and scoring as shown by McHale et al, and since the width-wise segmenting of McHale et al would have provided better portioning of the food product of Zimmermann et al. It would have been obvious to one of ordinary skill in the art to use a 15-50% nicked blade in the invention of McHale et al since McHale et al already included a scoring blade (Figure 14, #123) which would have required nicks and since this would have been done during the course of normal experimentation and optimization in order to aid formation of the rolled food.

3. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmermann et al, in view of McHale et al, as applied above, and further in view of WO 97/33822.

Zimmermann et al and McHale et al teach the above mentioned concepts. Zimmermann et al and McHale et al do not teach applying an edible adhesive. WO 97/33822 teaches a method of making rolled foods by applying an edible adhesive (page 16, line 5). It would have been obvious to one of ordinary skill in the art to incorporate the edible adhesive of WO 97/33822 into the invention of Zimmermann et al, in view of McHale et al, since all are directed to making foods, since Zimmermann et al already included rolling (Figure 1, #74), and since the edible adhesive of WO 97/33822 (page 16) would have prevented the rolled food of Zimmermann et al from unrolling.

4. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmermann et al, in view of McHale et al, as applied above, and further in view of Jens et al [Pat. No. 6,217,309].

Zimmermann et al and McHale et al teach the above mentioned concepts. Zimmermann et al and McHale et al do not teach a flat knife. Jens et al teach a method of making food by use of a flat knife (Figures 3-4, #20). It would have been obvious to one of ordinary skill in the art to incorporate the flat knife of Jens et al into the invention of Zimmermann et al, in view of McHale et al, since all are directed to making foods, since Zimmermann et al already included cutting (Figure 1, #64), since McHale et al already included a cutting roller (Figure 14, #123), and since the flat knife of Jens et al was particularly well suited to making complicated embossments (Figure 1).

Response to Arguments

5. Applicant's arguments filed April 1, 2004 have been fully considered but they are not persuasive.

Applicants argue that McHale et al and Zimmermann et al do not teach a segmented strip. However, Zimmermann et al already required segmentation of the food into separate pieces (column 9, lines 1-28). Furthermore, McHale et al specifically teach segmented strips and pieces of food across their entire width (Figure 7; Figure 14, #136).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections

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are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Drew E Becker
Primary Examiner
Art Unit 1761
